

Chapter 83. Investigation of Information and Records Relating to Physician Impairment

' 8301. Scope of Chapter

The rules of this Chapter prescribe the policy and procedures governing the board's exercise of its authority under R.S. 37:1278(B) to obtain, either by informal request or through the mandate of investigative or adjudicatory proceeding subpoena, disclosure of medical information and records relative to the physical and mental condition of physicians licensed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(1), (6) and R.S. 37:1278(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 15:269 (April 1989).

' 8303. Definitions

A. As used in this Chapter, the following terms shall have the meanings specified:

Health Care Provider Can individual or institutional state-licensed provider of health care services.

Medical Records Cany and all notes, records, charts, memoranda, test results, reports, radiographic films, or other written, graphic, or recorded items and materials, on whatsoever media recorded or stored and howsoever maintained relating to professional services in the nature of examination, history, evaluation, diagnosis, therapy, or treatment by a health care provider.

Physician Ca person possessing a doctor of medicine or equivalent degree who has applied to the board for a license or permit to practice medicine in the state of Louisiana or who holds a medical license or permit issued by the board.

B. Masculine terms wheresoever used in this chapter shall be deemed to include the feminine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(1), (6) and R.S. 37:1278(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 15:268 (April 1989).

' 8305. Statement of Policy and Intent

A. The privilege of confidentiality with respect to communications between a patient and a physician, recognized equally as a matter of Louisiana law and professional medical ethics, serves an important public policy interest in encouraging and permitting a patient's forthright, full, and unfettered communication of medically relevant information to a physician, communication vital to the integrity and effectiveness of the physician-patient relationship. The board recognizes that the principle of confidentiality is no less important with respect to a physician who is himself a patient of another physician. Contraposed with its solicitude for such principles and interests, however, is the board's statutory responsibility to safeguard the public against physicians whose capacity to practice medicine with reasonable skill and safety is compromised by physical or mental condition, disease, or infirmity. In appropriate instances in which the board has reasonable cause to believe that a physician's ability to practice medicine safely is impaired, as in other instances recognized by law, it is necessary and appropriate that the individual physician's interest in the confidentiality of his medical records and information yield to the overriding public interest.

B. The board interprets R.S. 37:1278(B) to authorize the board to obtain disclosure of medical information and records in the possession of physicians and other health care practitioners and institutions which relate to the diagnosis or treatment of a physician when the board, on the basis of a written complaint, has reasonable cause to believe that the physician to whom such information or records relate is or may be incapable of practicing medicine with reasonable skill and safety to patients by virtue of mental illness or deficiency or physical illness, including but not limited to deterioration through the aging process or the loss of motor skills, and/or the excessive use or abuse of drugs, including alcohol. The board specifically interprets R.S. 37:1278(B), in intent and effect, to confine the scope of the board's authority to obtain disclosure of medical information and records to obtaining, by request or subpoena, only such information and records as are relevant to the patient-physician's capacity to practice medicine with reasonable skill and safety.

C. In the implementation of this authority, it is and shall be the policy of the board to exercise due regard for the important interests served by confidentiality of medical information and records and, accordingly, to exercise such authority only in circumstances in which the information or records sought are not otherwise reasonably available to the board and the board's exercise of the authority conferred by R.S. 37:1278(B) is necessary to discharge its responsibilities under the Medical Practice Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(1), (6) and R.S. 37:1278(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR

15:269 (April 1989).

' 8307. Basis for Obtaining Medical Information and Records

A. Pursuant to the authority vested in the board by R.S. 37:1278(B), the board may request, subpoena, or otherwise seek to obtain otherwise privileged or confidential medical information and records from a health care provider relating to such health care provider's diagnosis or treatment of a physician licensed by the board, without such physician's express authorization or consent, when:

1. the board has grounds for an objectively reasonable belief that the subject physician's capacity to practice medicine with reasonable skill and safety to patients is impaired by mental illness or deficiency, or physical illness, including but not limited to deterioration through the aging process or the loss of motor skills, and/or the excessive use or abuse of drugs; and

2. the board has a reasonable basis for believing that the health care provider is in possession of information or records relevant to a determination as to whether the subject physician is incapable of practicing medicine with reasonable skill and safety to patients.

B. The reasonable belief required by ' 8307.A.1 must be based, in whole or in part, upon information provided to the board in writing which is apparently reliable and is subscribed by an identifiable individual or institution or upon information developed by investigation of the board initiated upon a complaint of or against the subject physician submitted in written form to the board and signed by the complainant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(1), (6) and R.S. 37:1278(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 15:269 (April 1989).

' 8309. Procedure for Obtaining Medical Information and Records

A. When the board has a basis, pursuant to R.S. 37:1278(B) and as specified by ' 8307, for seeking and obtaining disclosure from a health care provider of otherwise privileged or confidential medical information and records relating to the diagnosis or treatment of a physician, and such information is required in connection with an official investigation or pending adjudication of the board, prior to a request or service of an investigative subpoena by the board for such information or records, the board shall first serve an initial inquiry in writing on the health care provider. Such initial inquiry shall:

1. clearly identify the physician who is the subject of the board's inquiry;
2. indicate the nature of the condition, disease, or infirmity which the board believes affects the subject physician's capacity to practice medicine with reasonable skill and safety;
3. request the health care provider's response as to whether such health care provider:
 - a. does have in his or its possession information and/or records relevant to a determination as to whether the subject physician is incapable of practicing medicine with reasonable skill and safety to patients;
 - b. does not have in his or its possession information or records relevant to such determination; or
 - c. is unable to determine whether information or records in his or its possession are relevant to such determination;
4. request that the health care provider:
 - a. if an institution, submit to the board a true and complete copy of all relevant medical records in the possession of the health care provider; or
 - b. if an individual, submit to the board, at the election of the health care provider, either:
 - i. a written report and evaluation summarizing the nature and course of the health care provider's services to the subject physician, the condition for which the subject physician was seen, the health care provider's diagnosis, the course of treatment, if any, the results of such treatment, and the health care provider's prognosis for the subject physician, to the extent that such information may be relevant to a determination of the physician's capacity to practice medicine with reasonable skill and safety, together with the health care provider's opinion, if any, as to whether, as of the date of such report, or as of the date that the subject physician was last seen, examined, or evaluated by the health care provider, the subject physician was capable of practicing medicine with reasonable skill and safety; or
 - ii. a true and complete copy of all medical records in the possession of the health care provider relevant to the physician's capability of practicing medicine with reasonable skill and safety;
5. provide a summary of the provisions of R.S. 37:1278(B); and
6. prescribe a reasonable deadline for the health care provider to submit its response to the board.

B. If the board has reason to believe that a health care provider's response to its initial inquiry is inaccurate,

incomplete, or insufficient in any respect, notwithstanding a timely response or the submission of a written report or medical records, the board may appoint an independent consultant to consult with the health care provider concerning his or its response. The independent consultant shall be a physician licensed by the board who shall, to the extent possible and practicable, be designated by the board from among physicians engaged in the same specialty practice as the responding health care provider. In the selection of such consultant the board may consult with the Impaired Physicians Committee of the Louisiana State Medical Society or with appropriate specialty medical organizations. Such independent consultant shall be authorized to consult with the health care provider concerning the information and records in the possession of the health care provider relative to the subject physician, to examine the records of the health care provider relative to the subject physician, and to advise the board as to whether, in the opinion of the independent consultant, the health care provider is in possession of relevant medical information and records not previously reported or provided to the board. The independent consultant's consultation with the health care provider and his examination of the health care provider's records shall otherwise be maintained in confidence, and the independent consultant shall not disclose to the board the contents of any information or records in the possession of the health care provider.

C. the board may issue and serve a subpoena for the appearance and testimony and/or the production of relevant medical information and records of a health care provider relative to a subject physician:

1. with respect to information or records, previously provided to the board in response to an initial inquiry under ' 8309.A, which are sought to be introduced, offered into evidence, or otherwise used in connection with an adjudicatory proceeding before the board pursuant to R.S. 37:1285; or

2. when a health care provider fails to timely respond to an initial inquiry under ' 8309.A; or

3. when an independent consultant appointed by the board pursuant to ' 8309.B determines that the health care provider is in possession of relevant medical information and records not previously reported or provided to the board; or

4. when a health care provider fails or refuses to consult with or permit examination of records by an independent consultant appointed by the board pursuant to ' 8309.B; or

5. when the board has reasonable grounds to believe immediate disclosure or production of relevant medical information and records is imperatively required to prevent imminent danger to the public health and safety.

D. With respect to relevant medical information and records in the possession of a health care provider not subject to the board's subpoena authority or not located within the state of Louisiana who or which fails or refuses to respond to an initial inquiry by the board pursuant to ' 8309.A, or who fails or refuses to provide relevant medical information or records in his or its possession, the subject physician, upon reasonable prior notice and request by the board, shall be obligated to execute and subscribe a written instrument, directed to such health care provider, authorizing such health care provider to disclose and provide relevant medical information and records to the board. A physician's failure to provide such written authorization and consent, when so requested by the board pursuant to this section, shall be deemed a violation of the rules and regulations of the board, constituting sufficient grounds under R.S. 37:1285(A)(30) for the denial of an application by the physician for licensure or for the suspension or revocation of the physician's medical license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(1), (6) and R.S. 37:1278(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 15:269 (April 1989).

' 8311. Confidentiality of Medical Information and Records

Medical information and records obtained by the board pursuant to R.S. 37:1278(B) and the rules of this chapter, and as to which the privilege of confidentiality has not otherwise been waived or abandoned, shall be maintained in confidence by the board, its officers, members, employees, and agents, shall not be deemed or treated as public records, and shall be privileged against disclosure or production pursuant to administrative or judicial subpoena; provided, however, that any such information or records which are admitted into evidence and made part of the administrative record in an adjudicatory proceeding before the board pursuant to R.S. 37:1285 shall remain confidential but shall not be privileged from disclosure and production pursuant to administrative or judicial subpoena and provided further that any such information or records made a part of an administrative adjudicatory record shall become public records upon the filing of a petition for judicial review of the board's final decision therein.

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